

ACQUISITION BY NUTRIUS UK BIDCO LIMITED OF PARTNERSHIP IN CHILDREN'S SERVICES LIMITED AND BOSTON HOLDCO B LIMITED

Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) the Competition and Markets Authority (CMA) has reasonable grounds for suspecting that it is or may be the case that Nutrius UK BidCo Limited and Partnership in Children's Services Limited (**PICS**) and Boston HoldCo B Limited (**Boston HoldCo B**) have ceased to be distinct;
- (b) the CMA is considering, pursuant to section 22 of the Act, whether it is or may be the case that a relevant merger situation has been created and whether the creation of that situation has resulted or may be expected to result in a substantial lessening of competition in any market or markets in the United Kingdom (**UK**);
- (c) the CMA wishes to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference; and
- (d) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to Nutrius UK TopCo Limited (**Nutrius UK TopCo**), CapVest Private Equity III LP (**CapVest**) and Nutrius UK BidCo Limited (**Nutrius UK BidCo**) (Order).

COMMENCEMENT, APPLICATION AND SCOPE

1. This Order commences on the commencement date: 25 January 2019.
2. This Order applies to CapVest, Nutrius UK TopCo and Nutrius UK BidCo.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige CapVest, Nutrius UK TopCo or Nutrius UK BidCo to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.

MANAGEMENT OF THE CAPVEST AND PICS / BOSTON HOLDCO B BUSINESSES UNTIL DETERMINATION OF PROCEEDINGS

4. Except with the prior written consent of the CMA, CapVest, Nutrius UK TopCo and Nutrius UK BidCo shall not, during the specified period, take any action which might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
 - (a) lead to the integration of the PICS or Boston HoldCo B businesses with the CapVest business;
 - (b) transfer the ownership or control of the CapVest business or the PICS or Boston HoldCo B business or any of their subsidiaries; or
 - (c) otherwise impair the ability of the PICS and Boston HoldCo B businesses or the CapVest business to compete independently in any of the markets affected by the transaction.
5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, CapVest, Nutrius UK TopCo and Nutrius UK BidCo shall at all times during the specified period procure that, except with the prior written consent of the CMA:
 - (a) the PICS and Boston HoldCo B businesses are carried on separately from the CapVest business and the PICS and Boston HoldCo B businesses' separate sales or brand identity is maintained;
 - (b) the PICS and Boston HoldCo B businesses and the CapVest business are maintained as a going concern and sufficient resources are made available for the development of the PICS and Boston HoldCo B

businesses and the CapVest business, on the basis of their respective pre-merger business plans;

- (c) except in the ordinary course of business, no substantive changes are made to the organisational structure of, or the management responsibilities within, the PICS and Boston HoldCo B businesses or the CapVest business;
- (d) the nature, description, range and quality of goods and/or services supplied in the UK by each of the two businesses are maintained and preserved;
- (e) except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the PICS and Boston HoldCo B businesses and the CapVest business are maintained and preserved, including facilities and goodwill;
 - (ii) none of the assets of the PICS or Boston HoldCo B business or the CapVest business are disposed of; and
 - (iii) no interest in the assets of the PICS or Boston HoldCo B business or the CapVest business is created or disposed of;
- (f) there is no integration of the information technology of the PICS, Boston HoldCo B or CapVest businesses, and the software and hardware platforms of the PICS and Boston HoldCo B businesses shall remain essentially unchanged, except for routine changes and maintenance;
- (g) the customer and supplier lists of the two businesses shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the PICS or Boston HoldCo B business will be carried out by the PICS / Boston HoldCo B business alone and for the avoidance of doubt the CapVest business will not negotiate on behalf of the PICS or Boston HoldCo B business (and vice versa) or enter into any joint agreements with the PICS or Boston HoldCo B business (and vice versa);
- (h) all existing contracts of the PICS and Boston HoldCo B businesses and the CapVest business continue to be serviced by the business to which they were awarded;
- (i) no changes are made to key staff of the PICS or Boston HoldCo B business or CapVest business;

- (j) no key staff are transferred between the PICS and Boston HoldCo B businesses and the CapVest business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the PICS and Boston HoldCo B businesses and the CapVest business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the PICS or Boston HoldCo B business (or any of its employees, directors, agents or affiliates) to the CapVest business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory and/or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the transaction) and on the basis that, should the transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

COMPLIANCE

- 6. CapVest, Nutrius UK TopCo and Nutrius UK BidCo shall procure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
- 7. CapVest, Nutrius UK TopCo and Nutrius UK BidCo shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by CapVest, Nutrius UK TopCo and Nutrius UK BidCo and their subsidiaries with this Order. In particular, on 8 February 2019 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of CapVest / Nutrius UK TopCo / Nutrius UK BidCo or other persons of CapVest / Nutrius UK TopCo / Nutrius UK BidCo as agreed with the CMA shall, on behalf of CapVest / Nutrius UK TopCo / Nutrius UK BidCo, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
- 8. At all times, CapVest, Nutrius UK TopCo and Nutrius UK BidCo shall, or shall procure that PICS and Boston HoldCo B shall, actively keep the CMA informed of any material developments relating to the PICS or Boston HoldCo B business or the CapVest business, which includes but is not limited to:

- (a) details of key staff who leave or join the PICS or Boston HoldCo B business or the CapVest business;
 - (b) any interruption of the PICS, Boston HoldCo B or CapVest business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
 - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the PICS, Boston HoldCo B or CapVest business including any substantial changes in customers' demand; and
 - (d) substantial changes in the PICS, Boston HoldCo B or CapVest business' contractual arrangements or relationships with key suppliers.
9. If CapVest, Nutrius UK TopCo or Nutrius UK BidCo has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that CapVest, Nutrius UK TopCo and/or Nutrius UK BidCo may be directed to appoint under paragraph 10.
10. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
11. CapVest, Nutrius UK TopCo and Nutrius UK BidCo shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

INTERPRETATION

12. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
13. For the purposes of this Order:

'the Act' means the Enterprise Act 2002;

'an affiliate' of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time

would be regarded as being under common control for the purposes of section 26 of the Act;

'Boston HoldCo B' means Boston HoldCo B Limited, company number 08516284;

'the Boston HoldCo B business' means the business of Boston HoldCo B and its subsidiaries carried on as at the commencement date;

'business' has the meaning given by section 129(1) and (3) of the Act;

'CapVest' means CapVest Private Equity III LP;

'the CapVest business' means the business of CapVest and its subsidiaries carried on as at the commencement date;

'commencement date' means 25 January 2019;

'control' includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

'the decisions' means the decisions of the CMA on the questions which it is required to answer by virtue of section 35 of the Act;

'key staff' means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

'Nutrius UK BidCo' means Nutrius UK BidCo Limited, company number 11598953;

'the Nutrius UK BidCo business' means the business of Nutrius UK BidCo and its subsidiaries but excluding the PICS and Boston HoldCo B businesses, carried on as at the commencement date;

'Nutrius UK TopCo' means Nutrius UK TopCo Limited, company number 11598370;

'the Nutrius UK TopCo business' means the business of Nutrius UK TopCo and its subsidiaries;

'the ordinary course of business' means matters connected to the day-to-day supply of goods and/or services by PICS, Boston HoldCo B or CapVest and does not include matters involving significant changes to the

organisational structure or related to the post-merger integration of PICS, Boston HoldCo B and CapVest;

'PICS' means Partnership in Children's Services Limited, company number 08152989;

'the PICS business' means the business of PICS and its subsidiaries carried on as at the commencement date;

'specified period' means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

'subsidiary', unless otherwise stated, has the meaning given by section 1159 of the Companies Act 2006;

'the transaction' means the transaction by which Nutrius UK BidCo and PICS and Boston HoldCo B have ceased to be distinct within the meaning of section 23 of the Act;

'the two businesses' means each of the CapVest business and the PICS and Boston HoldCo B businesses;

unless the context requires otherwise, the singular shall include the plural and vice versa.

Alba Ziso Assistant Director, Mergers

ANNEX

Compliance statement for [CapVest / Nutrius UK TopCo / Nutrius UK BidCo]

I [insert name] confirm on behalf of [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] that:

COMPLIANCE IN THE RELEVANT PERIOD

1. In the period from [insert date] to [insert date] (the Relevant Period):
 - (a) [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] has complied with the Order made by the CMA in relation to the transaction on 25 January 2019 (the Order).
 - (b) [CapVest / Nutrius UK TopCo / Nutrius UK BidCo]'s subsidiaries have also complied with this Order.
2. Subject to paragraph 3 of the Order, and except with the prior written consent of the CMA:
 - (a) No action has been taken by [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
 - (i) lead to the integration of the PICS and Boston HoldCo B businesses with the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business;
 - (ii) transfer the ownership or control of the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business or the PICS or Boston HoldCo business or any of their subsidiaries; or
 - (iii) otherwise impair the ability of the PICS and Boston HoldCo B businesses or the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business to compete independently in any of the markets affected by the transaction.
 - (b) The PICS and Boston HoldCo B businesses have been carried on separately from the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo]

business and the PICS and Boston HoldCo B businesses' separate sales or brand identity has been maintained.

- (c) The PICS and Boston HoldCo B businesses and the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business have been maintained as a going concern and sufficient resources have been made available for the development of the PICS and Boston HoldCo B businesses and the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business, on the basis of their respective pre-merger business plans.
- (d) No substantive changes have been made to the organisational structure of, or the management responsibilities within, the PICS or Boston HoldCo B business or the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business, except in the ordinary course of business.
- (e) The nature, description, range and quality of goods and/or services supplied in the UK by the PICS and Boston HoldCo B businesses and the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
 - (i) all of the assets of the PICS and Boston HoldCo B businesses and the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
 - (ii) none of the assets of the PICS or Boston HoldCo B business or the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business have been disposed of; and
 - (iii) no interest in the assets of the PICS or Boston HoldCo B business or the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business has been created or disposed of.
- (g) There has been no integration of the information technology of the PICS or Boston HoldCo B or the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] businesses, and the software and hardware platforms of the PICS and Boston HoldCo B businesses have remained essentially unchanged, except for routine changes and maintenance.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been

operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the PICS / Boston HoldCo B business have been carried out by the PICS / Boston HoldCo B business alone and, for the avoidance of doubt, the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business has not negotiated on behalf of the PICS or Boston HoldCo B business (and vice versa) or entered into any joint agreements with the PICS or Boston HoldCo B business (and vice versa).

- (j) All existing contracts of the PICS and Boston HoldCo B businesses and the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the PICS or Boston HoldCo B business or the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business.
- (k) No key staff have been transferred between the PICS and Boston HoldCo B businesses and the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the PICS and Boston HoldCo B businesses and the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the PICS or Boston HoldCo B business (or any of its employees, directors, agents or affiliates) to the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business (or any of its employees, directors, agents or affiliates), or vice versa.
- (n) Except as listed in paragraph (o) below, there have been no:
 - (i) key staff that have left or joined the PICS or Boston HoldCo B business or the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business;
 - (ii) interruptions of the PICS or Boston HoldCo B business or the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business (including

without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;

(iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the PICS or Boston HoldCo B business or the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business; or

(iv) substantial changes in the PICS or Boston HoldCo B or [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business' contractual arrangements or relationships with key suppliers.

(o) [list of material developments]

3. [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] and its subsidiaries remain in full compliance with the Order and will, or will procure that PICS and Boston HoldCo B, continue actively to keep the CMA informed of any material developments relating to the PICS, Boston HoldCo B or the [CapVest / Nutrius UK TopCo / Nutrius UK BidCo] business in accordance with paragraph 8 of the Order.

INTERPRETATION

4. Terms defined in the Order have the same meaning in this compliance statement.

I UNDERSTAND THAT:

5. it is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fining, imprisonment for a term not exceeding two years, or both.** (Section 117 of the Enterprise Act 2002.)
6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF [CAPVEST / NUTRIUS UK TOPCO / NUTRIUS UK
BIDCO]

Signature

Name

Title

Date